

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL ACTION NO. 1:00cr79BrG

HERBERT DANIEL FISHER, JR.

DEFENDANT

ORDER

The United States Court of Appeals for the Fifth Circuit entered an order remanding this case and directed the Court to determine whether the defendant's Motion for Reconsideration [**docket entry no. 93**], dated December 15, 2005 and filed by the Court on December 27, 2005, was timely deposited with the institution's internal mail system in accordance with FEDERAL RULES OF APPELLATE PROCEDURE 4(c)(1). Accordingly, the Court issued an order directing Fisher to either (1) file a declaration made under penalty of perjury as set forth in 28 U.S.C. § 1746, or (2) file a notarized statement, either of which required Fisher to set forth the date of the motion's deposit and state that first-class postage had been prepaid. Fisher responded by filing a declaration made under penalty of perjury. In this declaration, Fischer attached a certified mail receipt showing that his Motion for Reconsideration was deposited with the institution's mail system on December 16, 2005. Since Fisher had until December 22, 2005 to file said motion, the Court finds that it was timely filed. As such, the defendant timely filed his Notice of Appeal. Accordingly,

IT IS HEREBY ORDERED that this case should be returned to the United States Court of Appeals for the Fifth Circuit for further

proceedings.

SO ORDERED this, the 12<sup>th</sup> day of October, 2006.

S/DAVID BRAMLETTE

UNITED STATES DISTRICT JUDGE